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10 ONLINE MEDIA ADVISORS LLC, et al.,  
11 Plaintiffs,  
12 v.  
13 RALLYVERSE, INC.,  
14 Defendant.

15 Case No. 14-cv-03208-RS

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28 **ORDER REQUESTING FURTHER  
BRIEFING**

Pursuant to Civil Local Rule 7-1(b), defendant's motion to dismiss has been submitted without oral argument. The first prong of the motion contends that the suspension of plaintiff's corporate status deprived it of standing to file suit. Plaintiff has now obtained a Certificate of Revivor stating that it has been "relieved of suspension or forfeiture and is now in good standing with the Franchise Tax Board." Plaintiff cites to cases from California state courts holding that such revivor permits a party to proceed with an appeal filed during suspension, and some federal authority to similar effect. Plaintiff has not, however, pointed to any case expressly holding that a lack of capacity to bring suit at the time of the filing can be cured through revivor notwithstanding the general rule that jurisdiction must exist at the commencement of the action. *See Keene Corp. v. United States*, 508 U.S. 200, 207, 113 S.Ct. 2035, 124 L.Ed.2d 118 (1993) ("[T]he jurisdiction of the Court depends on the state of things at the time of the action brought.")

Although defendants' reply brief acknowledges the revivor and appears to abandon the argument that dismissal for lack of standing is warranted, jurisdictional defects cannot be waived.

1     See *Henderson ex rel. Henderson v. Shinseki*, 131 S. Ct. 1197, 1202 (2011) (“federal courts have  
2     an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and  
3     therefore they must raise and decide jurisdictional questions that the parties either overlook or  
4     elect not to press.”) Because a judgment may even be vacated on appeal where an appellate court  
5     *sua sponte* determines jurisdiction was lacking, *see, e.g.*, *Munoz v. Mabus*, 630 F.3d 856, 860 (9th  
6     Cir. 2010), going forward without further inquiry would be ill-advised.

7           Accordingly, within 15 days of the date of this order, unless plaintiff instead elects to  
8     dismiss this action, it shall file a supplemental brief, not to exceed 10 pages addressing the  
9     jurisdictional issue. Defendants may file a response within one week thereafter. The matter will  
10    then again be submitted for decision. The Case Management Conference set for November 20,  
11    2014 is hereby continued to December 18, 2014.

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13           **IT IS SO ORDERED.**

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15           Dated: November 14, 2014



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17           RICHARD SEEBORG  
18           United States District Judge